



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/673,143

09/30/2003

Young-Woo Lee

1293.1829

3823

21171 7590 12/09/2009
STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER

AGUSTIN, PETER VINCENT

ART UNIT

PAPER NUMBER

2627

MAIL DATE

DELIVERY MODE

12/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/673,143	Applicant(s) LEE ET AL.	
	Examiner Peter Vincent Agustin	Art Unit 2627	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Peter Vincent Agustín/
 Primary Examiner, Art Unit 2627

Continuation of 11. does NOT place the application in condition for allowance for the following reasons:

Applicant's arguments filed on November 24, 2009 have been fully considered but they are not persuasive.

(1) In response to applicant's argument on page 11 that "the essentiality of the comparing of the LV1 and LV2 signals in Ogihara et al. cannot be ignored or discounted, and is primarily relevant", the examiner acknowledges that Ogihara et al.'s teaching of comparing the LV1 and LV2 signals is essential to the invention of Ogihara et al., which is primarily directed to discriminating between DVD-RW, DVD+RW, and DVD-ROM discs. However, the essentiality of this teaching does not make the Ogihara et al. reference untouchable nor immune from being modified. As noted in the rejections, the proposed modification is to implement a device which discriminates only between, e.g., a DVD+RW disk and a DVD-ROM disk (that is, no discrimination of a DVD-RW disk). This would be applicable in a scenario/environment when identification of a DVD-RW disk is not desired, for example, in a household where users prefer to use DVDs that follow the DVD+ standard, and there is a desire to discriminate between only DVD+RW disks and DVD-ROM disks. Although this scenario is not expressly taught, suggested, or mentioned by Ogihara et al., one of ordinary skill in the art would have recognized this possibility based on the teaching of Ogihara et al. Furthermore, while applicant repeatedly emphasizes and focuses on the essentiality of the teachings of Ogihara et al. and insists that it would not have been obvious to modify Ogihara et al., it should be noted that there is nothing in the Ogihara et al. reference that criticizes, disparages, nor discredits the proposed modification.

(2) The applicant cites in pages 9-11 several citations from MPEP § 2143 & 2144. However, the applicant neither clearly and specifically points out how these citations are applicable to the rejections, nor clearly and specifically argues the invalidity of the rejections based on these citations. Furthermore, none of these citations are relevant to applicant's argument regarding the essentiality of the teachings of Ogihara et al.

(3) In response to applicant's arguments on pages 11-12, which reiterates the essentiality of the teachings of Ogihara et al. and the non-obviousness to modify this reference, please see item (1) above.

(4) In response to applicant's request for an interview, it should be noted that prosecution has been closed with the Final Rejection dated July 24, 2009. Furthermore, the examiner believes that all arguments presented by the applicant have been clearly addressed in this and the previous Advisory Actions. The examiner will willingly consider any further arguments presented in a written response. Should the applicant choose to maintain the same arguments, the examiner recommends filing an Appeal Brief to the Board of Patent Appeals and Interferences.